

In the Matter of License No. R 11894 Merchant Mariner's Document
No. BK 84621 and all other Seaman Documents
Issued to: JOSEPH P. DOCKENDORF

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1468

JOSEPH P. DOCKENDORF

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 27 March 1964, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended Appellant's seaman's documents for 2 months outright plus 4 months on 12 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a radio officer on board the United States SS SPITFIRE under authority of the license above described, on or about 26 March 1964, Appellant used abusive language to an officer of the Coast Guard who was engaged in the performance of duty.

Appellant did not appear for hearing.

The Investigating Officer introduced in evidence his own testimony relative to the service charges, the testimony of the officer referred to in the specification, and that of a Federal Communications radio engineer.

No evidence was presented in defense.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of 2 months outright plus 4 months on 12 months' probation.

The decision was served on 1 April 1964. Appeal was timely filed on 10 April 1964.

FINDINGS OF FACT

On 26 March 1964, Appellant was serving as a radio officer on board the United States SS SPITFIRE and acting under authority of his license and document while the ship was in the port of

Baltimore, Maryland. The vessel was undergoing initial inspection prior to its restoration to service under the American Flag. LCDR Frank M. Sperry was acting as hull inspector. Appellant accosted the inspector in a passageway outside the radio room and asked for his service identification, which was given. Appellant then told the inspector that he had notified Coast Guard Headquarters, FCC, and his Congressman that the inspector was an "arbitrary punk" and that he would have him court-martialed. Other uncomplimentary names were used during a tirade which Appellant told the inspector that he had no right to enter the radio room.

These are the substantive facts adduced on the record of hearing. Because of the nature of the appeal, facts involving the service of charges must be reviewed.

On receipt of the telephoned complaint of the hull inspector aboard SPITFIRE, the Senior Investigating Officer in the Baltimore Marine Inspection Office dispatched an officer to the ship. This officer interviewed witnesses but found that Appellant was not aboard. In some manner, however, he identified Appellant who was coming out of a business building across the highway from the shipyard gate. He approached Appellant, stated his object of investigating the complaint, and asked for an on the spot interview. Appellant declared that he would not be interviewed, entered a taxicab, and departed.

The Investigating Officer waited until about 2:00 p.m. at which time he ascertained that Appellant was returning to the shipyard. He served a subpoena on Appellant, ordering his appearance for investigation at the Custom House that afternoon. Appellant crumpled the subpoena and threw it at the officer, declaring that no one but a U.S. marshal could compel him to go anywhere. He boarded the ship, followed a few moments later by the Investigating Officer.

The Investigating Officer drafted the charges which became the matter of hearing. These he served on Appellant in the master's office. The time of opening the hearing was set for 3:00 p.m., about one hour after the service, because the ship was scheduled to sail that night.

At this time the Investigating Officer, in compliance with 46 CFR 137.05-25(e), began to explain the Appellant's rights to him. Appellant attempted to frustrate this explanation by vehement talking. The master ordered him to be quiet so that the explanation could be made. Eventually the Investigating Officer succeeded in informing Appellant of the nature of the proceedings and of his right to counsel.

Appellant again refused to listen, told the Investigating

Officer that he would have him court-martialed, and declared that only a U. S. marshal or a Federal judge could "do this" to him. The Investigating Officer handed him the written notice and charges. He offered him transportation to the Custom House and advised him that the hearing would proceed in his absence. Appellant threw away the charge sheet.

Sometime before the scheduled hour of the hearing Appellant telephoned the Senior Investigating Officer in Baltimore and asked him how to institute court-martial proceedings against the hull inspector. Appellant was advised to come to the office to air his grievances and also to defend himself against the charges preferred. He was also advised of the possible outcomes of the hearing. Again Appellant stated that he would listen only to a U.S. marshal or a Federal judge.

One half hour after the scheduled time, Appellant not having appeared, the Examiner opened the hearing which was concluded the following day.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant was denied due process and that errors were made. The denial of due process is stated thus: "I was not afforded an opportunity to get an attorney of my choice. 'railroaded' in a period of a few hours out of my livelihood. No investigation was held." It is also said: "Had an investigation been held I would have had an opportunity to subpoena witnesses and place these people under Oath."

The assertion of "error" is not made more specific, but it would appear to be that the examiner should have found as a fact that the hull inspector, by his own abusiveness, provoked Appellant. " I repeat I regret entering into a vituperation contest with Sperry...but I plead that harassment and provocation was great."

OPINION

To dispose of the second contention first, it must be said that on the record there was no way that the Examiner could so find. There is no evidence of any provocation.

Turning to the more complex question of due process, I note that the commencement of the hearing was set for one hour from the time of service of notice.

As a general rule, notice of hearing must be served

sufficiently in advance that the person charged may effectively prepare his defense and exercise his statutory rights. Appellant claims here he was denied an opportunity to procure counsel or to obtain the testimony of witnesses.

The circumstances of this case bear close scrutiny.

Against Appellant's assertion that no investigation was held is the evidence in the record that an investigating officer was functioning under the provisions of 46 CFR 137.05. He initially gave Appellant opportunity to talk with him informally. Appellant declined the opportunity and left the scene in a taxicab.

Somewhat later the Investigating Officer attempted to complete his investigation via the use of a subpoena. Appellant attempted to frustrate service by a forcible rejection. Only when the Investigating Officer realized that his investigation was being effectively hampered by Appellant's contumacious conduct did he conclude that service of charges was the next appropriate step. On the basis of the available evidence, and in light of the fact that no further evidence would be forthcoming, it was proper to close the investigation and proceed with charges.

In connection with this effort it must again be noted that Appellant attempted to frustrate the Investigating Officer in the performance of his duty. By argument, verbal abuse, and refusal to listen, he tried to obstruct service.

Under these conditions, with Appellant willfully and insolently refusing to participate in the proceedings, in the knowledge that the sailing of the vessel that night would place him physically beyond the reach of statutory power, I cannot say that he had inadequate notice. It is unthinkable that an individual, subject to the provisions of R.S. 4450, as amended, could defeat the ends of the statute by conduct such as was exhibited here.

Nor can Appellant complain that he had no opportunity to have witnesses subpoenaed. He made known no such desires on three occasions with the Investigating Officer. He did not appear for hearing, at which he could have made known to the Examiner such desires, requesting postponement for that or any other valid purpose.

Were the charges other than what they were, I would have no hesitancy in affirming the decision and order of the Examiner, to stand as an example that the processes and procedures authorized by statute cannot be flouted. However, I am mindful that the charge found proved here involves the performance of duty by a Coast Guard official.

In order that there may never be a suspicion of taint generated by the Appellant in this case, I am going to give him the opportunity of presenting his case by adducing relevant evidence. I will enter a conditional vacation of the decision and order and give Appellant a period of sixty days in which to enter appearance before the Examiner in Baltimore for the purpose of continuing the case. If Appellant is employed at sea on service of this notice and the duration of the voyage precludes personal appearance within the sixty day period, he may enter appearance by mail, requesting reasonable delay from the Examiner. No procrastination should be permitted.

The present record of hearing stands, but the Investigating Officer may, if he sees fit, supplement his case as though he had not rested.

ORDER

Based upon the above Findings and Opinion, I do therefore ORDER: that the Decision and Order of the Examiner dated at Baltimore on 27 March 1964, are provisionally VACATED and the case is REMANDED to the Examiner for proceedings consistent herewith. If Appellant does not avail himself of the relief extended herein, the initial decision and order of the Examiner are then AFFIRMED.

E. J. ROLAND
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 18th day of August, 1964.